Supreme Court, U.S.
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No. 96-956

IN THE
Supreme Court of the United States
OCTOBER TERM, 1996

CITIZENS' UTILITY RATEPAYER BOARD,
Petitioner,

v.

KANSAS PIPELINE PARTNERSHIP,
Respondent.

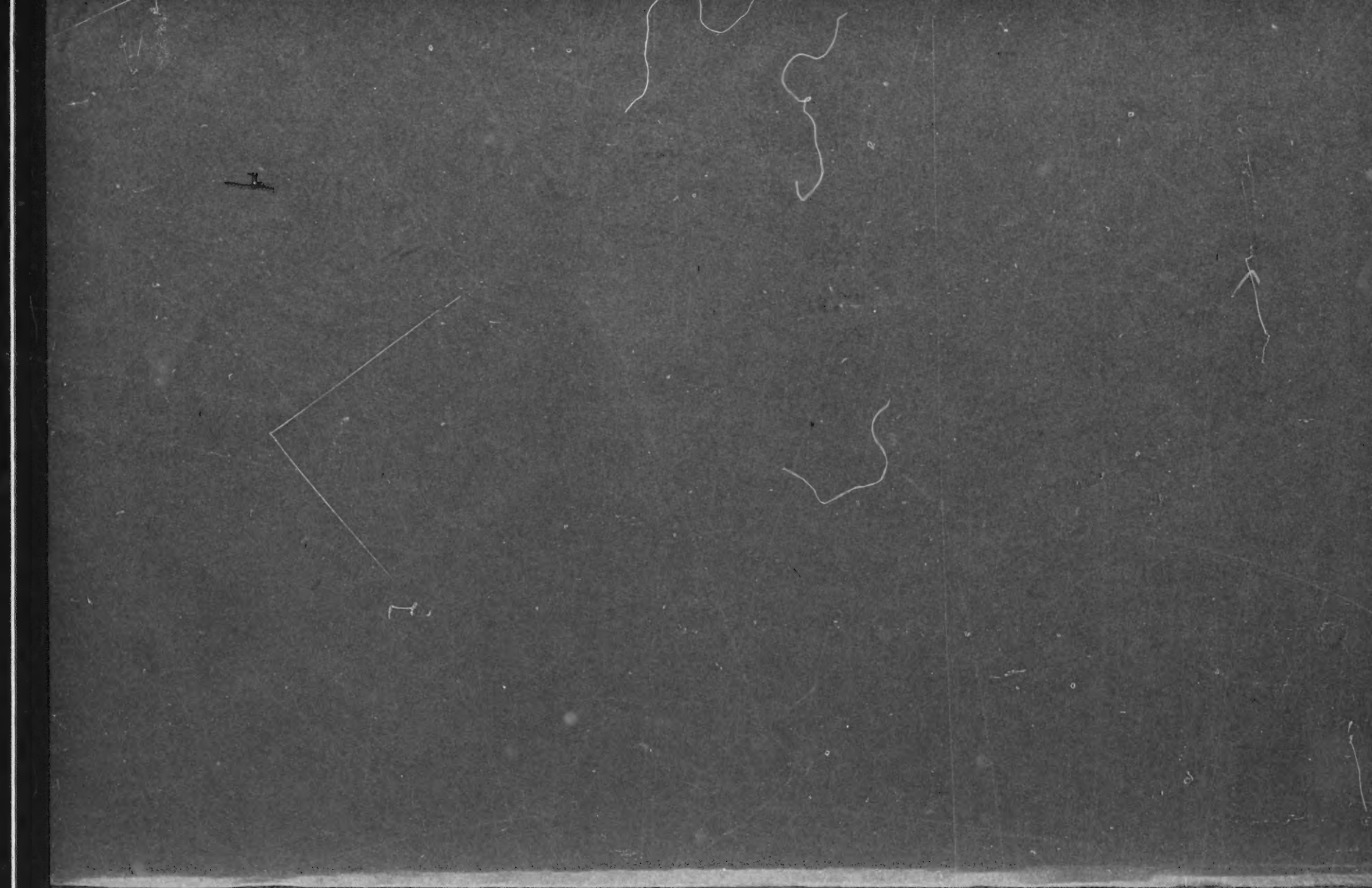
On Petition for Writ of Certiorari to the Supreme Court of the State of Kansas

RESPONSE OF WILLIAMS NATURAL GAS COMPANY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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RULE 29.6 STATEMENT

Respondent Williams Natural Gas Company is a wholly owned subsidiary of The Williams Companies, Inc. Other subsidiaries of The Williams Companies, Inc., that are not wholly owned by that corporation are as follows:

Altra Energy Technologies L.L.C.
American Soda, L.L.P.
Apco Argentina Inc.
Free Port Terminal Co. Limited
Kern River Gas Supply Corp.
Kern River Gas Transmission Co.
Kern River Service Corp.
Kiowa Gas Storage, L.L.C.
Nebraska Energy, L.L.C.
NES Supply Corp.
Northern Border Intermediate Limited Partnership
Northern Border Partners, L.P.
Parkco, L.L.C.
Pekin Energy Co.
Reserveco Inc.
TransNetwork Holding Co.
Tubexpress, Inc.
Williams Field Services-Gulf Coast Co., L.P.
Wiljet, L.L.C.

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RESPONSE OF WILLIAMS NATURAL GAS COMPANY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Respondent, Williams Natural Gas Company ("WNG") files this Response in Support of the Petition for Writ of Certiorari filed herein by Petitioner, Citizens' Utility Ratepayer Board ("CURB"). WNG supports the issuance of a Writ of Certiorari to review an order of the Supreme Court of the State

of Kansas denying review of an order of the Court of Appeals of the State of Kansas ("Court of Appeals"), which held that the failure of the Kansas Corporation Commission ("KCC") to reach a decision on the merits of certain public utility applications within the 240-day period prescribed by Kan. Stat. Ann. § 66-117(b) denied Kansas utility ratepayers the right to have the applications considered on their merits. Moreover, because this Petition raises the same issue WNG raised in its Petition for Certiorari in Docket No. 96-778, both Petitions should be granted and the matters consolidated for briefing and oral argument.

STATEMENT OF THE CASE

This case arises from a decision by the KCC in a docket filed by Kansas Pipeline Partnership ("KPP") seeking approval of five contracts (the "Contracts") with Western Resources, Inc. ("WRI"). The KCC held extensive hearings after exhaustive discovery in which KPP, WNG, KCC Staff, CURB, WRI, and various other parties were active participants. All parties submitted briefs. Before the KCC could issue a final decision, the Federal Energy Regulatory Commission ("FERC") ruled that KPP is part of a single interstate pipeline system subject to FERC's exclusive jurisdiction under the Natural Gas Act.[1] Upon learning of FERC's assertion of jurisdiction, the KCC determined the new jurisdictional status was, in effect, an amendment of the application to approve the Contracts and, on that basis, restarted the 240-day statutory decision period, if that period even applied. Kan. Stat. Ann. § 66-117(b) (the "Statute") provides that various utility filings will be "deemed

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[1] KansOk Partnership, Kansas Pipeline Partnership, & Riverside Pipeline Co., 73 FERC ¶ 61,160 (1995).

approved" if the KCC fails to act within 240 days. The KCC stayed further action in the consolidated dockets. KPP appealed to the Court of Appeals seeking a determination that the Contracts are deemed approved because the KCC failed to issue a final order within 240 days.

The Court of Appeals determined that the Statute's 240-day time limit applies to this matter and found that the Contracts are approved by operation of law. The Kansas Supreme Court declined to review that decision. WNG previously filed a Petition for Writ of Certiorari in Docket No. 96-778 raising, in the context of the same case, the same issue raised by CURB's Petition. The KCC filed a response in support of WNG's Petition. The Court should grant CURB's and WNG's Petitions and invalidate the unconstitutional interpretation of the Statute by the courts below.

REASONS FOR GRANTING THE WRIT

CURB's Petition raises issues that clearly have broad impact on the citizens of Kansas.[2] The KCC filed a Memorandum in Support of WNG's Petition in the related Docket No. 96-778. CURB's Petition raises the same issue WNG raised in its Petition. CURB and the KCC are the parties charged with representing the public interest in receiving safe and economical natural gas service.[3] The KCC is responsible for reviewing and approving the rates charged by intrastate

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[2] This Response will not focus on the merits of the case, which are adequately covered by WNG's Petition in Docket No. 96-778 and CURB's Petition in this Docket. Instead, WNG will detail why the interests of the parties involved merit the Court's review.

[3] Kan. Stat. Ann. § 66-1223 (1996). Pet. App. I.

natural gas transportation companies and LDCs in Kansas. The Statute is part of the legislative framework that dictates the manner in which the KCC fulfills its statutory duty. CURB represents the interests of residential and small commercial ratepayers in Kansas. WNG is a significant interstate transporter of natural gas produced and consumed in Kansas and six other states. WNG, as a competitor of KPP and the major player in the portion of the interstate natural gas grid that traverses Kansas, has a significant interest in these Dockets.

The combination of the KCC, CURB, and WNG represents the many diverse parties that have a direct and substantial interest in this matter. Aside from KPP, all of the parties directly impacted urge the Court to grant certiorari to resolve an important federal question.

The state courts below "decided an important federal question in a way that conflicts with relevant decisions of this Court."[4] As detailed in WNG's Petition in Docket No. 96-778 and CURB's Petition in this Docket, the lower courts decided the issues before them in a manner repugnant to the 14th Amendment to the United States Constitution. A decision from the Court regarding this matter would have a tremendous impact on the citizens of Kansas and on the regulatory activities of the state of Kansas. More importantly, similar statutes in at least twelve other states would likely be impacted by the Court's interpretation of constitutional due process.[5] The

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[4] Sup. Ct. R. 10(c).

[5] Minn. Stat. § 216B.16 (2) (a) (Supp. 1995); Mo. Ann. Stat. § 392.230(5) (Vernon 1996) (telephone); Neb. Rev. Stat. § 19-4616(7) (1996) (municipal utilities); S.C. Code Ann. § 58-5-240(E) (Law. Co-op. 1995); Tex. Corps. & Ass'ns Code Ann. §§ 2.212(d), 3.211 (d), 5.08(d) (West

involvement of the KCC, CURB, and WNG in these related dockets makes it clear that the issues presented are of great importance. Because the issues deal with the application of the 14th Amendment to pervasive state regulatory schemes, this case raises an important federal question of first impression, which the Court should review.

This case is also important because it represents WNG's and CURB's sole opportunity for review of the denial of their right to due process. The parties have exhausted their state court review options and are precluded by the Johnson Act from seeking an injunction in federal court.[6] The Johnson Act prevents federal district courts from enjoining operation of state utility commission orders where:

> (1) Jurisdiction is based solely on diversity of citizenship or repugnance of the order to the Federal Constitution; and,
>
> (2) The order does not interfere with interstate commerce; and,
>
> (3) The order has been made after reasonable notice and hearing; and,

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1995); Utah Code Ann. § 54-7-12 (3)(c) (1996); Vt. Stat. Ann. tit. 30, § 227(a) (1996); Wis. Stat. § 196.19(d) (1994). See Ala. Code § 37-1-81(B) (1996); Fla. Stat. ch. 366.06(3); 367.081(8) (1996); Idaho Code § 61-622 (1996); Me. Rev. Stat. Ann. tit. 35-A, § 310 (2) (West 1995).

[6] 28 U.S.C. § 1342 (1993).

(4) A plain, speedy and efficient remedy may be had in the courts of such State.[7]

Jurisdiction of this matter is based solely on the constitutional infirmity of the order of the Kansas Court of Appeals sitting in review of an order of the KCC. The agency action involves the intrastate transportation of natural gas in Kansas for sale to Kansas consumers and therefore does not interfere with interstate commerce. The KCC issued its order following notice and a hearing, albeit one that did not result in a decision on the merits. Finally, the parties had appellate remedies in the Kansas courts. Those appeals were incorrectly denied and resulted in WNG's and CURB's petitions to this Court. Thus, the Johnson Act's four criteria are met and WNG and CURB are precluded from pursuing injunctive relief in the federal courts. The fact that the Petitions filed by WNG and CURB are the sole remedy for the violation of Kansas ratepayers' due process rights emphasizes the importance of the issue raised.

CONCLUSION

The Petitions in this Docket and Docket No. 96-778 raise an important federal question of great public interest. WNG urges the Court to grant the Petitions, consolidate the cases, and decide this important issue.

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[7] Id.

Respectfully submitted,

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